

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PHILIP O. SHWACHMAN, et al.,

Plaintiffs,

v.

TOWN OF HOPEDALE, et al.,

Defendants.

No. 4:18-cv-40209-TSH

AGREEMENT FOR JUDGMENT

WHEREAS, Plaintiffs commenced a legal action against the Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”) along with other defendants on November 20, 2018 in the Commonwealth of Massachusetts Worcester County Superior Court styled as Shwachman, Philip O. et al. v. Town of Hopedale et al. No. 1885CV01781, (the “Action”);

WHEREAS, the Action was removed on December 18, 2018 to the United States District Court for the District of Massachusetts styled as Shwachman et al v. Town of Hopedale et al. No. 4:18-CV-40209-TSH;

WHEREAS, Plaintiffs filed their First Amended Complaint on January 30, 2019, restating their previous claims;

WHEREAS, the Plaintiffs and the Municipal Defendants attended Alternative Dispute Resolution on July 18, 2019, August 21, 2019 and October 31, 2019 where the Plaintiffs reached

an agreement with the Municipal Defendants and recited on the record the terms as memorialized below;

WHEREAS, the Plaintiffs and the Municipal Defendants have executed a Settlement Agreement resolving their disputes in this matter;

NOW, THEREFORE, it is agreed, by and between the Plaintiffs and the Municipal Defendants, that the Plaintiffs' claims against the Municipal Defendants only shall be settled and dismissed in their entirety with prejudice on the following terms:

1. **Production of Records**: The Municipal Defendants will provide within 60 days from signing this Agreement for Judgment, all documents regarding the URP or the G&U Railroad that were withheld from Plaintiffs under the Public Records Act on any ground other than attorney client privilege or work product, and a privilege log for all documents withheld based on attorney client privilege or work product, with regard to the following public records requests dated:

- a. July 20, 2018;
- b. November 14, 2018; and
- c. November 26, 2018.

2. **Urban Renewal Plan**: The Municipal Defendants agree to the full, public and complete withdrawal of the URP and termination of the current URP process, including the removal of all mentions of the draft URP from the Town of Hopedale's website.

3. **Master Planning Process**: Mr. Shwachman or a representative will be invited by the Town to be a member of (a) any citizens' committee that is formed as part of the master planning process that the Town is now undertaking as it relates to downtown redevelopment or economic development of underutilized property in Hopedale in consideration of rezoning, and

(b) any citizens' committee that is formed as part of any urban renewal plan process undertaken by the Town that may affect any of Plaintiffs' properties. The Town agrees that any such master planning or urban renewal process shall not be effectively run by G&U Railroad or its affiliates, employees or owner. The parties will endeavor to jointly work together in good faith toward a viable development plan of Mr. Shwachman's properties and neighboring Town properties in order to promote economic development in the downtown area. Mr. Shwachman agrees to allow inspection of the property on reasonable notice for purposes of such development plan, with prior approval by Mr. Shwachman regarding which individuals will be attending the inspection.

4. **Payment:** The Municipal Defendants will reimburse Plaintiffs' attorneys' fees in the amount of \$50,000 ("Settlement Amount"). The Settlement Amount will be paid within fourteen (14) business days of the execution of this Agreement for Judgment.

5. **Hopedale Pond Dam:** In lieu of additional reimbursement of Plaintiffs' attorneys' fees by the Municipal Defendants, the Town will enter into an agreement regarding the Hopedale Pond dam operated by Plaintiffs which has been encroached upon by the reconstruction of the Freedom Street bridge by the Town. The agreement (attached as **Exhibit A**) will include (a) an agreement to construct a replacement catwalk and replace stop log boards and mechanism on the pond side of the dam at the Town's sole cost, together with an agreement to provide access to the catwalk for operation of the dam; (b) assistance by the Town with operation of the Dam, made necessary by relocation of the catwalk from the opposite side of the Dam; and (c) removal of former stop log boards and mechanisms as proposed by Town's engineers BETA, Inc. in plans provided to Plaintiff.

6. **Incorporation by Reference of the Settlement Agreement.** The Plaintiffs and the Municipal Defendants hereby incorporate by reference all of the terms of the Settlement

Agreement (attached as **Exhibit B**) as if they were set forth fully herein, and stipulate that the Settlement Agreement shall survive entry of this Agreement for Judgment as an independent contract.

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN, THOMAS A. WESLEY,
LOUIS ARCUDI, III, BRIAN R.
KEYES, STEVEN SETTE, DOWNTOWN
REVITALIZATION COMMITTEE,
HOPEDALE PLANNING BOARD
JASON MACDONALD and
DONALD W. HOWES,

By their attorney,

/s/ Jeffrey T. Blake
Jeffrey T. Blake (BBO# 655773)
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
(617)556-0007
jblake@k-plaw.com

Dated: January 21, 2020

Respectfully submitted,

PHILIP O. SHWACHMAN,
MATTHEW W. SHWACHMAN,
JUDITH L. SHWACHMAN,
HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER,
LLC

By their attorneys,

/s/ David E. Lurie
David E. Lurie (BBO #542030)
Harley C. Racer (BBO #688425)
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109
Tel. 617-367-1970
dlurie@luriefriedman.com
hracer@luriefriedman.com

SO ORDERED:

/s/Timothy S. Hillman
Timothy S. Hillman, Judge

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system on January 21, 2020 and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Harley C. Racer
Harley C. Racer

EXHIBIT A

AGREEMENT REGARDING HOPEDALE POND DAM

This Agreement Regarding Hopedale Pond Dam (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Shwachman”), and the Town of Hopedale (the “Town”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Shwachman owns property abutting Hopedale Pond Dam (the “Dam”) in the Town of Hopedale;

WHEREAS, Shwachman owns certain water rights to the Hopedale Pond, including the water that passes through and over the Dam;

WHEREAS, Shwachman operates the Dam mechanisms and the water levels of the Hopedale Pond through the seasonal and occasional removal and replacement of a series of stop log boards on top of the Dam;

WHEREAS, the Town rebuilt and expanded the Freedom St. bridge, encroaching onto Shwachman’s property and preventing access to critical portions of the catwalk previously utilized to access the Dam and the stop log board mechanism;

WHEREAS, the expanded Freedom St. bridge prevents Shwachman from safely accessing the Dam and maintaining desired water levels of Hopedale Pond from his property.

NOW, THEREFORE, it is agreed, by and between Shwachman and the Town that this issue concerning the Dam shall be resolved and settled on the following terms:

1. **Replacement Catwalk:** The Town, at the Town’s sole cost, will construct a replacement catwalk, remove the former stop log boards and mechanisms and replace stop log boards and mechanism on the pond side of the Dam, as proposed by Town’s engineers BETA, Inc. in conceptual plans provided to Shwachman, attached hereto as **Exhibit A**.

2. **Easement:** Once final construction drawings are prepared and construction of the replacement catwalk has been completed, the Town will present a request to Town Meeting to grant an easement to Shwachman to the replacement catwalk for access to and for operation of the Dam. Such easement shall be in recordable form mutually agreeable to the Parties. The Board of Selectmen shall support the request for the Easement at Town Meeting. In the event that the Town does not vote to grant said easement, the Town shall issue a perpetual license to access the replacement catwalk and shall not terminate the

license except upon a material change to the Dam or surrounding area such that Shwachman no longer has a need to access the replacement catwalk for access to and for operation of the Dam.


3. Assistance with Operation of the Dam. The Town will provide to Shwachman additional personnel and equipment from the Hopedale Highway Department twice a year and as needed for, from time to time, and in case of emergencies to accomplish operations of the replacement stop log boards and mechanism on the pond side of the Dam, caused by relocation of the catwalk from the opposite side of the Dam.

4. Further Acts: Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.



PHILIP O. SHWACHMAN

HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

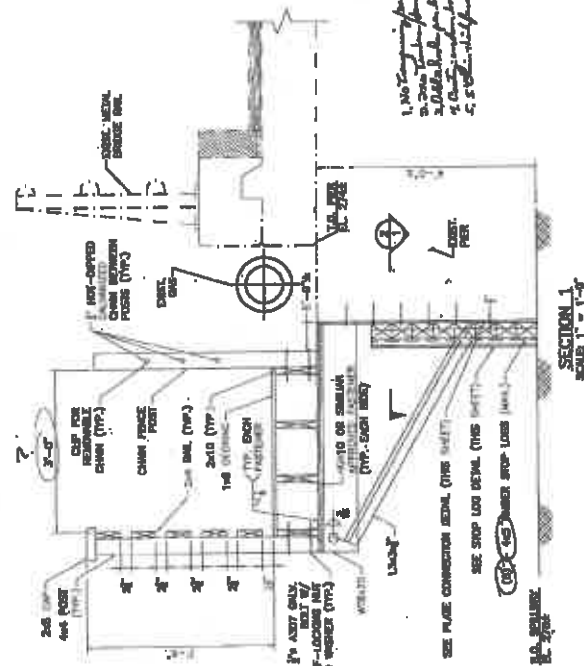
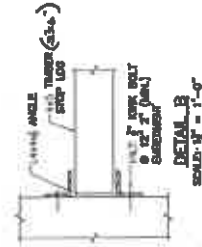
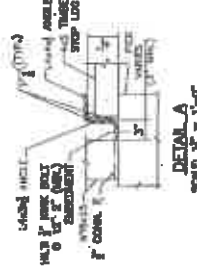
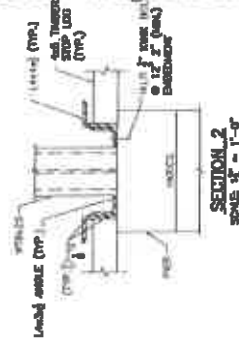
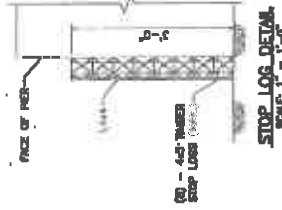
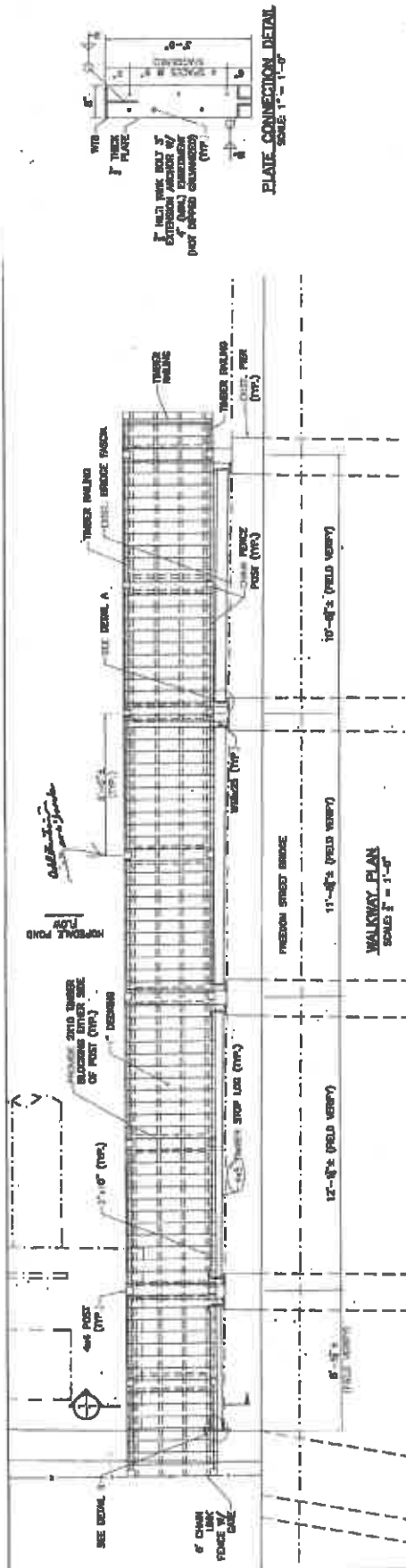
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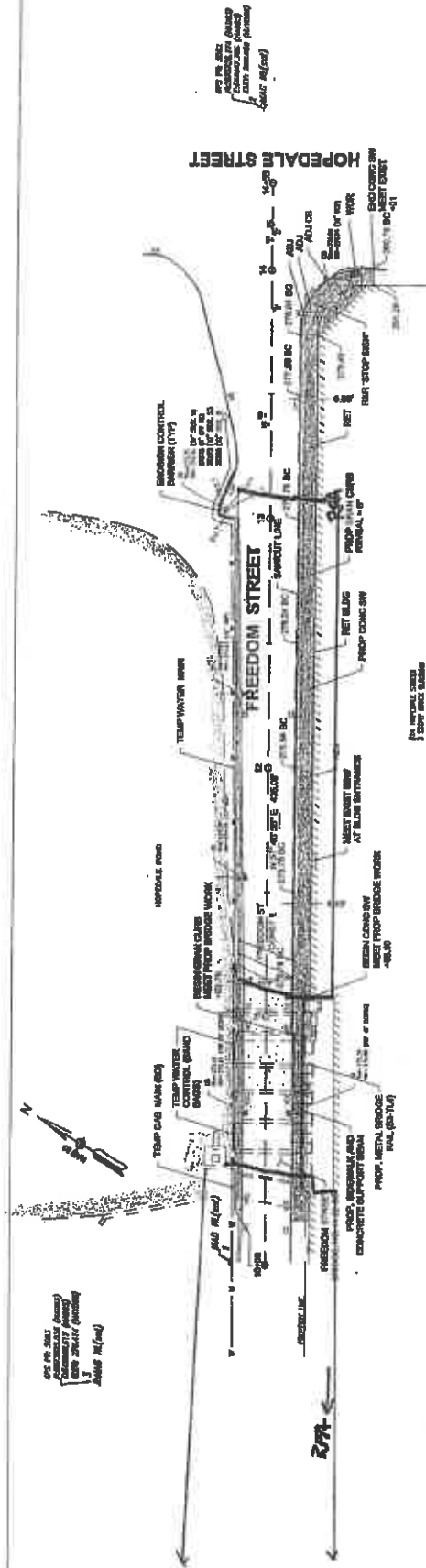

PHILIP O. SHWACHMAN

HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

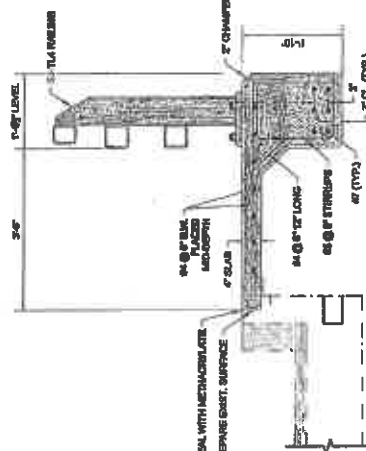

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

Exhibit A

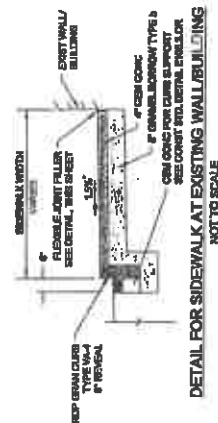
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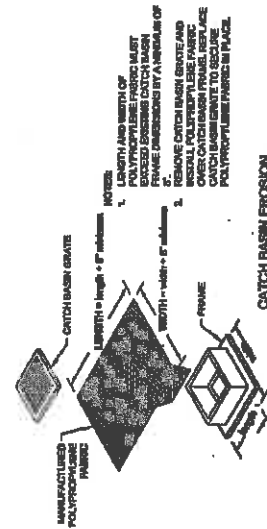
SIDEWALK CONSTRUCTION PLAN
SCALE 1"=20'



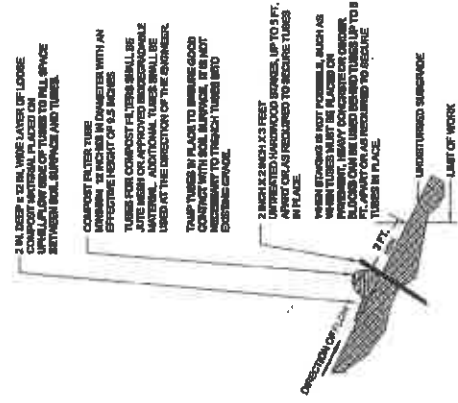
DETAIL FOR SIDEWALK AT BRIDGE
NOT TO SCALE



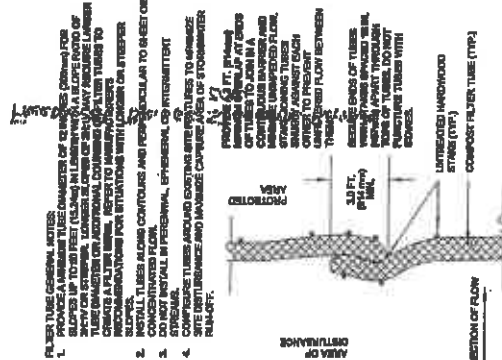
DETAIL FOR SIDEWALK AT EXISTING WALL/BULDOZING
NOT TO SCALE



CATCH BASIN EROSION CONTROL PROTECTION (TYP)
NOT TO SCALE



SINGLE COMPOST FILTER TUBE DETAIL FOR EROSION CONTROL
NOT TO SCALE



PLAN VIEW - COMPOST FILTER TUBE DETAIL
NOT TO SCALE

<p>BETA Professional Engineering & Surveying</p>		<p>PROJECT FREEDOM STREET OVER MILL RIVER SIDEWALK CONSTRUCTION HOPEDALE, MASSACHUSETTS</p>		<p>DATE 10/1/2018</p>		<p>SCALE 1"=20'</p>		<p>PROJECT NO. 18-001</p>		<p>SHEET NO. 1 OF 1</p>	
<p>CLIENT TOWN OF HOPEDALE</p>	<p>DESIGNER BETA ENGINEERING & SURVEYING</p>	<p>DATE 10/1/2018</p>	<p>SCALE 1"=20'</p>	<p>PROJECT NO. 18-001</p>	<p>SHEET NO. 1 OF 1</p>	<p>PROJECT FREEDOM STREET OVER MILL RIVER SIDEWALK CONSTRUCTION HOPEDALE, MASSACHUSETTS</p>	<p>DATE 10/1/2018</p>	<p>SCALE 1"=20'</p>	<p>PROJECT NO. 18-001</p>	<p>SHEET NO. 1 OF 1</p>	<p>PROJECT FREEDOM STREET OVER MILL RIVER SIDEWALK CONSTRUCTION HOPEDALE, MASSACHUSETTS</p>

STRA

1. ALL STEEL SHALL CONFORM TO AISC/ASTM A 570 GRADE 36.
2. ALL STEEL SHALL BE HOT DIP GALVANIZED TO CONFORM TO AISC/ASTM A 424.
3. GALVANIZED MEMBERS THAT ARE TO BE WELDED AFTER GALVANIZING SHALL BE WASHED 1 INCH ON EITHER SIDE OF THE WELD LINE PRIOR TO GALVANIZING. THE TOP OF THE TOP-FLANGE SHALL BE WASHED OF ITS FULL WIDTH AND LENGTH.

THESE

1. ALL TIMBER SHALL BE PRESURE TREATED AS PER AASHTO SPECIFICATION M113.
2. ALL TIMBER SHALL BE SAME LUMBER, SURFACED FOUR SIDES (2x4s) UNLESS OTHERWISE NOTED, AND SHALL COMPLY WITH THE REQUIREMENTS OF AASHTO M160.
3. SAME LUMBER SHALL BE PRESURE TREATED WITH ACQ AND CONFORMED TO AFWA STANDARD PS. ALL LUMBERS SHALL BE FASBATED TO THE MAXIMUM AND DRIED TO A MOISTURE CONTENT OF 18 PERCENT OR LESS AFTER TREATMENT.
4. ALL TIMBER SHALL BE PREMIUMED PRIOR TO TREATMENT.
5. BENT CAPS, JOINTS, BLOCKING, AND SPACERS SHALL BE SOUTHERN PINE, GRADE NO. 1 OR CREANER.
6. ALL TREATED TIMBER THAT IS FELD CUT, BARED THEIR DRILLED INTO OR DAMAGED SHALL BE TREATED AS OUTRIG IN AFWA STANDARD M44 WHICH REQUIRES THAT ALL CUTS, HOLES, OR VAILURES TO TREATED WOOD BE PROTECTED BY BRUSHING, SPINNING, DIPPING, OR DIPPING IN AN APPROVED PRESERVING.
7. ALL BRUSH SHALL BE NEW STRENGTH ASTM A507, UNLESS OTHERWISE NOTED. LOG GREY BRUSH SHALL COMPLY WITH THE REQUIREMENTS OF AFWA/AFWA STANDARD M113, GRADE 2.
8. ALL HANDMADE SHALL BE BALANCEZED AS PER CURRENT STATE SPECIFICATIONS AND/OR AASHTO SPECIFICATION M22.
9. CONSTRUCTION REQUIREMENTS SHALL CONFORM TO STATE SPECIFICATIONS. ALL TIMBER SHALL BE CUT TO LENGTH AND DRESSED TO SIZE IMMEDIATE PRIOR TO TREATMENT.
10. TIMBER WHICH AT THE DISCRETION OF THE ENGINEER IS SEVERELY WARPED, SOWN, SPLIT, OR SPANTERED SHALL NOT BE INCORPORATED IN THE WORK.
11. TIMBER GAL POST SHALL BE SET VERTICAL IN THE FIELD.
12. TIMBER RAILS SHALL BE ATTACHED PARALLEL TO THE ACTUAL SLOPE OF DECK.
13. RAILS SHALL BE CONTIGUOUS OVER TWO POSTS SPACING (MINIMUM).

EXHIBIT B

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Matthew W. Shwachman; Judith L. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Plaintiffs”), and Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Plaintiffs commenced a legal action against the Town of Hopedale, the Town of Hopedale Board of Selectmen, Thomas A. Wesley, Louis J. Arcudi, III, Brian R. Keyes, Steven A. Sette, Jason G. MacDonald, the Hopedale Downtown Revitalization Committee, the Hopedale Planning Board and Donald. W. Howes (collectively “Municipal Defendants”) along with other defendants on November 20, 2018 in the Commonwealth of Massachusetts Worcester County Superior Court styled as Shwachman, Philip O. et al. v. Town of Hopedale et al., No. 1885CV01781, (the “Action”);

WHEREAS, the Action was removed on December 18, 2018 to the United States District Court for the District of Massachusetts styled as Shwachman et al v. Town of Hopedale et al. No. 4:18-CV-40209-TSH;

WHEREAS, Plaintiffs filed their First Amended Complaint on January 30, 2019, restating their previous claims;

WHEREAS, the Plaintiffs and the Municipal Defendants attended Alternative Dispute Resolution on July 18, 2019, August 21, 2019 and October 31, 2019 where the Plaintiffs reached an agreement with the Municipal Defendants and recited on the record the terms as memorialized below;

NOW, THEREFORE, it is agreed, by and between the Plaintiffs and the Municipal Defendants, that the Plaintiffs’ claims against the Municipal Defendants only shall be settled and dismissed in their entirety with prejudice on the following terms:

1. **Production of Records:** The Municipal Defendants will provide within 60 days from signing this Settlement Agreement, all documents regarding the URP or the G&U Railroad that were withheld from Plaintiffs under the Public Records Act on any ground

other than attorney client privilege or work product, and a privilege log for all documents withheld based on attorney client privilege or work product, with regard to the following public records requests dated:

- a. July 20, 2018;
- b. November 14, 2018; and
- c. November 26, 2018.

2. **Urban Renewal Plan:** The Municipal Defendants agree to the full, public and complete withdrawal of the URP and termination of the current URP process, including the removal of all mentions of the draft URP from the Town of Hopedale's website.

3. **Master Planning Process:** Mr. Shwachman or a representative will be invited by the Town to be a member of (a) any citizens' committee that is formed as part of the master planning process that the Town is now undertaking as it relates to downtown redevelopment or economic development of underutilized property in Hopedale in consideration of rezoning, and (b) any citizens' committee that is formed as part of any urban renewal plan process undertaken by the Town that may affect any of Plaintiffs' properties. The Town agrees that any such master planning or urban renewal process shall not be effectively run by G&U Railroad or its affiliates, employees or owner. The parties will endeavor to jointly work together in good faith toward a viable development plan of Mr. Shwachman's properties and neighboring Town properties in order to promote economic development in the downtown area. Mr. Shwachman agrees to allow inspection of the property on reasonable notice for purposes of such development plan, with prior approval by Mr. Shwachman regarding which individuals will be attending the inspection.

4. **Payment:** The Municipal Defendants will reimburse Plaintiffs' attorneys' fees in the amount of \$50,000 ("Settlement Amount"). The Settlement Amount will be paid within fourteen (14) business days of the execution of this Settlement Agreement.

5. **Hopedale Pond Dam:** In lieu of additional reimbursement of Plaintiffs' attorneys' fees by the Municipal Defendants, the Town will enter into an agreement regarding the Hopedale Pond dam operated by Plaintiffs which has been encroached upon by the reconstruction of the Freedom Street bridge by the Town. The agreement (attached as **Exhibit A**) will include (a) an agreement to construct a replacement catwalk and replace stop log boards and mechanism on the pond side of the dam at the Town's sole cost, together with an agreement to provide access to the catwalk for operation of the dam; (b) assistance by the Town with operation of the Dam, made necessary by relocation of the catwalk from the opposite side of the Dam; and (c) removal of former stop log boards and mechanisms as proposed by Town's engineers BETA, Inc. in plans provided to Plaintiff.

6. **Agreement of Judgment:** The Parties, through their counsel, will execute and file a mutually acceptable Agreement of Judgment reflecting the terms of this Settlement Agreement and take any steps needed to have the agreement entered by the Court.

7. Mutual Releases:

- a. **The Municipal Defendants' Release:** In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Plaintiffs, which covenants, promises and representations survive this Release, the Municipal Defendants hereby release the Plaintiffs and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Plaintiff Releasees") from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Municipal Defendants had or have against any of the Plaintiff Releasees relating to the subject-matter of this Action and/or the Urban Renewal Plan. The Municipal Defendants specifically reserve their rights to seek enforcement of this Settlement Agreement.
- b. **Plaintiffs' Release:** In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Municipal Defendants, which covenants, promises and representations survive this Release, the Plaintiffs hereby release the Municipal Defendants and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Municipal Releasees") from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Plaintiffs had or have against any of the Municipal Releasees relating to the subject-matter of this Action and/or the Urban Renewal Plan. Specifically excluded from Plaintiffs' Release are any matters other than matters relating to this Action and the Urban Renewal Plan. The Plaintiffs specifically reserve their rights to seek enforcement of this Settlement Agreement.

8. Attorneys' Fees and Expenses: The Parties agree that, other than the Settlement Amount, each will bear all of the costs and expenses which it has incurred or shall incur, including, without limitation, attorneys' fees, which are in any way related to, or connected with or arise from, the filing, prosecution, negotiation or defense of the Action and/or the negotiation, drafting, execution or implementation of this Agreement.

9. Severability: The provisions of this Agreement are severable and should any provision be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

10. Construction: Each Party has had a full and complete opportunity to review this Agreement, as has counsel for each Party. Accordingly, the Parties agree that the

common-law principles of construing ambiguities against the drafter shall have no application hereto. It should be construed fairly and not in favor of or against one Party as the drafter hereof.

11. Governing Law: This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the Commonwealth of Massachusetts.

12. Complete Bar: The mutual release as set forth in Paragraph 8 may be asserted as a defense and complete bar to any action, claim, cross-claim, cause of action, demand, arbitration, or other proceeding that may be brought, instituted, or asserted by the Municipal Defendants or Plaintiffs or anyone acting or purporting to act on behalf of the Municipal Defendants or Plaintiffs, excepting an action by any Party to enforce the terms of this Agreement and any matters other than matters relating to this Action and the Urban Renewal Plan.

13. Amendment: Except by a further written agreement signed by the Parties: (a) this Agreement may not be amended, altered, modified or changed in any way; and (b) no waiver, forbearance or failure to enforce any provision of this Agreement will be deemed to be a waiver of any right with respect to any other occurrence or with respect to any other provision hereof.

14. Representation by Counsel: Each Party represents and warrants that it has been represented by independent counsel of its own choice throughout all negotiations that preceded the execution of this Agreement. Each Party further represents and warrants that the contents of this Agreement have been explained to it by its counsel, and that this Agreement is executed voluntarily and with full knowledge of its significance.

15. Execution of Agreement: Each Party warrants and represents that it has the capacity, right and authority to execute this Agreement.

16. Effectiveness of Agreement: This Agreement shall become effective as of the date first written above.

17. Entire Agreement: This Agreement is the entire agreement among the Parties with reference to the subject matter hereof and all prior negotiations and understandings among the Parties, written or oral, pertaining to the subject matter hereof, have been merged herein. The Parties acknowledge that no representation or promise not expressly contained in this Agreement has been made, and further acknowledge that they are not entering into this Agreement in reliance upon any promise or representation, express or implied, other than those expressly contained in this Agreement.

18. Enforcement: It is further understood and agreed that if, at any time, a violation of any term of this Agreement is asserted by any Party, that Party shall have the right (except as may be expressly provided elsewhere in this Agreement) to seek specific performance of that term and/or any other necessary and proper relief, including but not limited to damages. Venue for such action shall be exclusively in the United States District Court for the District of Massachusetts. The prevailing Party in any such action shall be entitled to recover its reasonable costs and attorneys' fees.

19. Counterpart Execution: This Agreement may be executed in any number of counterparts and will be binding when it has been executed and delivered by the last signatory hereto to execute a counterpart. A facsimile signature or signature emailed in pdf form shall be deemed to constitute an original signature for purposes of this Agreement.

20. Headings: Headings contained in this Agreement are for the convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.


21. Further Acts: Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.




PHILIP O. SHWACHMAN



HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
its President, Philip O. Shwachman



MATTHEW W. SHWACHMAN



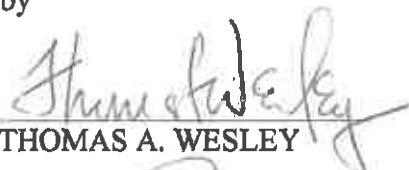
JUDITH L. SHWACHMAN

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.


TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF SELECTMEN by

HOPEDALE PLANNING BOARD by

DOWNTOWN REVITALIZATION COMMITTEE
by



THOMAS A. WESLEY


LOUIS J. ARCUDI, III,


BRIAN R. KEYES


STEVEN A. SETTE


JASON MACDONALD


DONALD W. HOWES

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF SELECTMEN by


HOPEDALE PLANNING BOARD by *Fadden Legal Chair 1/10/20*

DOWNTOWN REVITALIZATION COMMITTEE
by

THOMAS A. WESLEY

LOUIS J. ARCUDI, III,

BRIAN R. KEYES

STEVEN A. SETTE

JASON MACDONALD

DONALD W. HOWES

EXHIBIT A

AGREEMENT REGARDING HOPEDALE POND DAM

This Agreement Regarding Hopedale Pond Dam (this “Agreement”) is entered into as of December 16, 2019 by and between Philip O. Shwachman; Hopedale Properties, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613-0646; and Hopedale Industrial Center, LLC, a Massachusetts limited liability company with a principal place of business located at 100 MLK, Jr. Boulevard, Worcester, Massachusetts 01613, P.O. Box 646, Worcester, Massachusetts 01613 (collectively “Shwachman”), and the Town of Hopedale (the “Town”). The entities referred to herein are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, Shwachman owns property abutting Hopedale Pond Dam (the “Dam”) in the Town of Hopedale;

WHEREAS, Shwachman owns certain water rights to the Hopedale Pond, including the water that passes through and over the Dam;

WHEREAS, Shwachman operates the Dam mechanisms and the water levels of the Hopedale Pond through the seasonal and occasional removal and replacement of a series of stop log boards on top of the Dam;

WHEREAS, the Town rebuilt and expanded the Freedom St. bridge, encroaching onto Shwachman’s property and preventing access to critical portions of the catwalk previously utilized to access the Dam and the stop log board mechanism;

WHEREAS, the expanded Freedom St. bridge prevents Shwachman from safely accessing the Dam and maintaining desired water levels of Hopedale Pond from his property.

NOW, THEREFORE, it is agreed, by and between Shwachman and the Town that this issue concerning the Dam shall be resolved and settled on the following terms:

1. **Replacement Catwalk:** The Town, at the Town’s sole cost, will construct a replacement catwalk, remove the former stop log boards and mechanisms and replace stop log boards and mechanism on the pond side of the Dam, as proposed by Town’s engineers BETA, Inc. in conceptual plans provided to Shwachman, attached hereto as **Exhibit A**.

2. **Easement:** Once final construction drawings are prepared and construction of the replacement catwalk has been completed, the Town will present a request to Town Meeting to grant an easement to Shwachman to the replacement catwalk for access to and for operation of the Dam. Such easement shall be in recordable form mutually agreeable to the Parties. The Board of Selectmen shall support the request for the Easement at Town Meeting. In the event that the Town does not vote to grant said easement, the Town shall issue a perpetual license to access the replacement catwalk and shall not terminate the

license except upon a material change to the Dam or surrounding area such that Shwachman no longer has a need to access the replacement catwalk for access to and for operation of the Dam.


3. **Assistance with Operation of the Dam.** The Town will provide to Shwachman additional personnel and equipment from the Hopedale Highway Department twice a year and as needed for, from time to time, and in case of emergencies to accomplish operations of the replacement stop log boards and mechanism on the pond side of the Dam, caused by relocation of the catwalk from the opposite side of the Dam.

4. **Further Acts:** Each of the Parties to this Agreement agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions contained in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and in agreement herewith, the Parties through their respective, duly authorized counsel have executed and delivered this Agreement as of the date first above written.



PHILIP O. SHWACHMAN

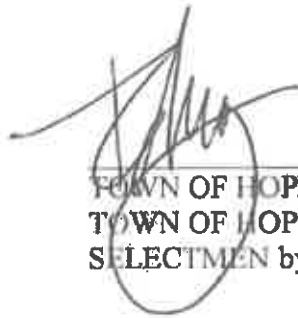
HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

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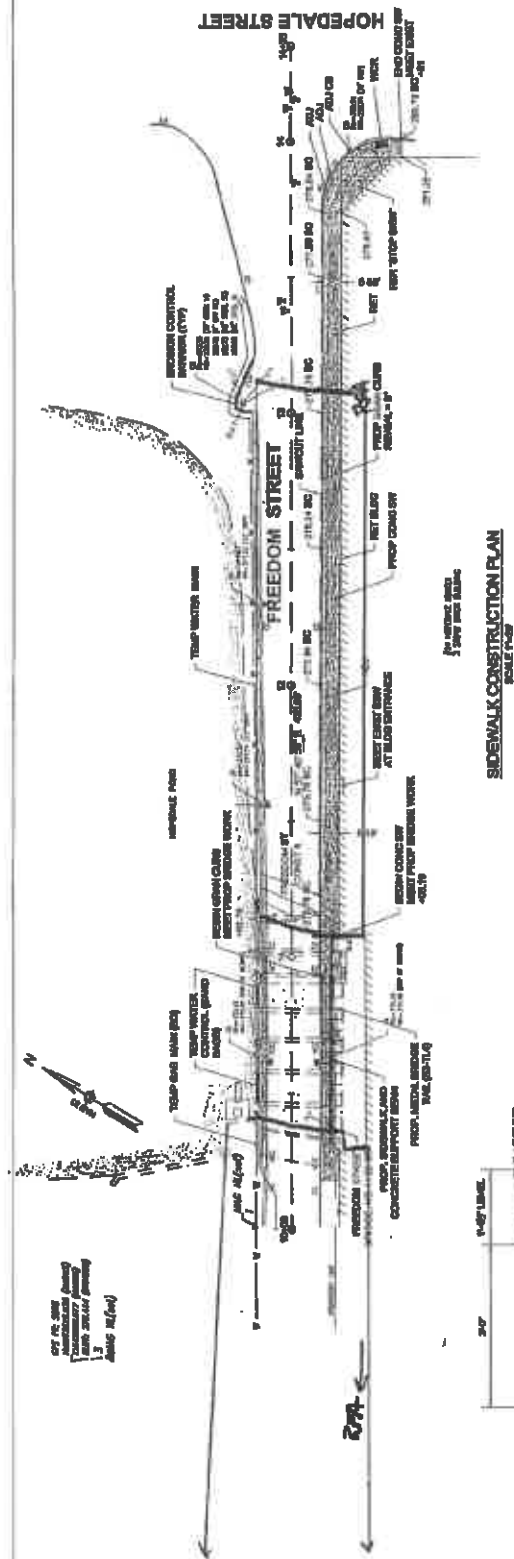
PHILIP O. SHWACHMAN

HOPEDALE PROPERTIES, LLC, and
HOPEDALE INDUSTRIAL CENTER, LLC by
Philip O. Shwachman, President of their
Managers

A handwritten signature in dark ink, appearing to be "John", is written over a horizontal line. The signature is stylized and cursive.

TOWN OF HOPEDALE,
TOWN OF HOPEDALE BOARD OF
SELECTMEN by

Exhibit A



1. **PLANT TIME** (GROWING, MATURING)
 - PLANTING: NUMBER OF PLANTS PLANTED PER ACRE
 - GROWING: TIME FROM PLANTING TO FIRST HARVEST
 - MATURING: TIME FROM FIRST HARVEST TO FULL HARVEST
2. **PLANTING TIME** (PLANTING, PREPARATION)
 - PLANTING: TIME FROM PLANTING TO FIRST HARVEST
 - PREPARATION: TIME FROM FIRST HARVEST TO FULL HARVEST
3. **PLANTING TIME** (PLANTING, PREPARATION, MATURING)
 - PLANTING: TIME FROM PLANTING TO FIRST HARVEST
 - PREPARATION: TIME FROM FIRST HARVEST TO FULL HARVEST
 - MATURING: TIME FROM FULL HARVEST TO FULL HARVEST
4. **PLANTING TIME** (PLANTING, PREPARATION, MATURING, HARVESTING)
 - PLANTING: TIME FROM PLANTING TO FIRST HARVEST
 - PREPARATION: TIME FROM FIRST HARVEST TO FULL HARVEST
 - MATURING: TIME FROM FULL HARVEST TO FULL HARVEST
 - HARVESTING: TIME FROM FULL HARVEST TO FULL HARVEST

3.04 INCH x 12 IN. WHEN LAYER IS LOOSE.
COMFORT MATERIAL PLACED ON
TOP OF LAYER OF TUBES TO FILL SPACE
BETWEEN THE SURFACE AND TUBES.

2 INCH X 2 INCH X 3 1/2 FEET
UNFINISHED HOLLOWED STUDS, UP TO 8 FT.
APART CAN BE REQUIRED TO REACH FULLER
IN PLACE.

1. LENGTH AND WIDTH OF POLYPROPYLENE FIBER MUST EXCEED SQUARE CATCH-BASED FIBER (DETERMINED BY A MINIMUM OF 5").
2. REMOVED CATCH BASES GRATE AND SECOND POLYPROPYLENE FIBERS OVER CATCHBASES FIRST. REPEAT CATCH BASES GRATE TO BECOME POLYPROPYLENE FIBER IN PLACE.

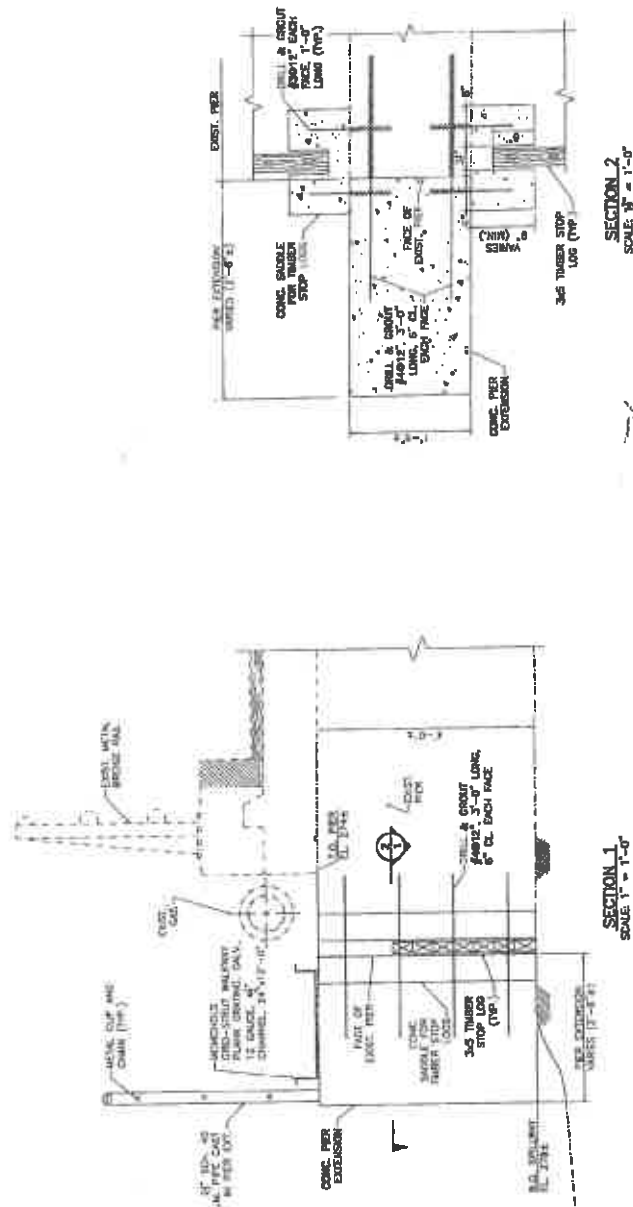
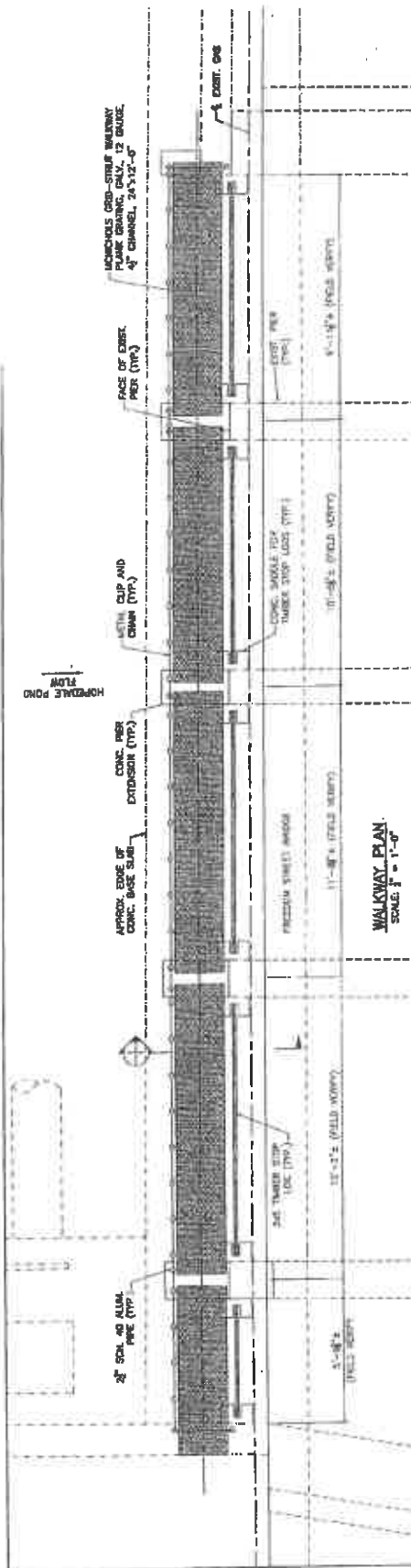
CATCH BASIN EROSION
CONTROL PROTECTION (TYPE)
NOT TO SCALE

DETAIL FOR SIDEWALK AT BRIDGE
NOT TO SCALE

DETAIL FOR SIDEWALK AT EXISTING WALL/BUILDING
NOT TO SCALE

SINGLE COMPOST FILTER TUBE DETAIL
FOR EROSION CONTROL
NOT TO SCALE

[illegible]

[illegible]

Optimal and

- TRUSS.**
1. ALL TRUSS SHALL BE PRESURE TREATED AS PER AISI/ITC SPECIFICATION M133.
 2. ALL TRUSS SHALL BE BURN LUMBER, SURFACED FOUR SIDES (S4S) UNLESS OTHERWISE NOTED, AND SHALL COMPLY WITH THE REQUIREMENTS OF AISI/ITC M133.
 3. BURN LUMBER SHALL BE PRESURE TREATED WITH ACQ CONFORMING TO ANPA STANDARD P1. ALL MEMBERS SHALL BE FABRICATED BEFORE TREATMENT AND DRYED TO A MOISTURE CONTENT OF 19 PERCENT OR LESS AFTER TREATMENT.
 4. ALL TRUSS SHALL BE PREDRILLED PRIOR TO TREATMENT.
 5. BOLT COPS, JOISTS, BLOCKING, AND SPACERS SHALL BE SOUTHERN PINE, GRADE NO. 1 OR GREATER.
 6. ALL TREATED TRUSS THAT IS FIELD CUT, WEDGED, OR DRILLED INTO OR DAMAGED SHALL BE REPAIRED TO ORIGINAL STRENGTH. ALL TRUSS SHALL BE PROTECTED BY BURNING, SPRAYING, OR PAINTING IN AN APPROVED PRESERVATIVE.
 7. ALL JOISTS SHALL BE HIGH STRENGTH AISI/ITC A572, UNLESS OTHERWISE NOTED. LAG SCREW SHALL COMPLY WITH THE REQUIREMENTS OF AISI/ITC STANDARD SPECIFICATION, GRADE 2.
 8. ALL HARDWARE SHALL BE GALVANIZED AS PER CURRENT STATE SPECIFICATIONS AND/OR AISI/ITC SPECIFICATION M133.
 9. CONNECTION REQUIREMENTS SHALL CONFORM TO STATE SPECIFICATIONS. ALL TRUSS SHALL BE CUT TO LENGTH AND DRILLED TO SIZE REQUIRED PRIOR TO TREATMENT.
 10. TRUSS WHICH AT THE DISCREION OF THE ENGINEER IS EXCESSIVELY DAMAGED, BOWED, SPLIT, OR SPALTERED SHALL NOT BE INCORPORATED IN THE TRUSS.
 11. TRUSS NAIL JOINT SHALL BE SET VERTICAL IN THE FIELD.
 12. TRUSS ROADS SHALL BE ATTACHED PARALLEL TO THE ACTUAL SLOPE OF DECK.
 13. WALLS SHALL BE CONTINUOUS OVER TWO JOINT SPACING (MINIMUM).

DECK.

1. ALL STEEL SHALL CONFORM TO AISI/ITC 360 GRADE 50.
2. ALL STEEL SHALL BE HOT DIP GALVANIZED TO CONFORM TO AISI/ITC-A771.
3. GALVANIZED MEMBERS THAT ARE TO BE WELDED AT THE JOINTS SHALL BE WELDED 1 INCH OF SPACING FROM THE JOINTS. THE WELD SHALL BE FULL PENETRATION. THE TOP OF THE TOP PLATE SHALL BE WELDED THE FULL WIDTH AND LENGTH.

<p>DATE: 05/19/21</p> <p>TIME: 10:00 AM</p> <p>PROJECT: 2 OF 2</p>		<p>FREEDOM STREET OVER HOPEDALE POND HOPEDALE, MA</p>		<p>NOTES</p>	
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<p>NO. 466</p>		<p>NO. 467</p>		<p>NO. 468</p>	
<p>NO. 469</p>		<p>NO. 470</p>		<p>NO. 471</p>	